



New Hampshire

Department of Education

Serving New Hampshire's Education Community

## Technical Advisory

### School Employee and Volunteer Criminal History Records Check

RSA 189:13-a

*This Technical Advisory continues the New Hampshire Department of Education's communication about the amendments that were made during the last legislative session to RSA 189:13-a, regarding school employee and designated school volunteer criminal history records checks. **The new law became effective July 19, 2016.***

During the 2015-2016 legislative session, two significant changes were made to **RSA 189:13-a, School Employee and Designated Volunteer<sup>1</sup> Criminal History Records Check**. This technical advisory discusses the amendments that were made and discusses some of the potential implications of those amendments.<sup>2</sup> However, this technical advisory is not in any way intended to supplant a school district seeking or receiving guidance from legal counsel.

#### ***The Inclusion of Misdemeanor Convictions in the Criminal Record Check:***

The law still requires that any employee, selected applicant for employment, substitute teacher, student teacher, student intern, designated volunteer, or volunteer organization which contracts with a school administrative unit, school district, chartered public school, or public academy to provide services, including but not limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the contractor or employees of the contractor provide services directly to students of the district, chartered public school, or public academy submits to a criminal history records check.<sup>3</sup> The cost of a criminal history records check or any other relevant records check shall be borne by the selected applicant unless otherwise determined by a school administrative unit, chartered public school or public academy.<sup>4</sup>

While under the prior version of RSA 189:13-a, the criminal records check would only reveal felony convictions, now State Police will include whether or not there was a misdemeanor conviction(s) in the criminal background check notice.<sup>5</sup> It is important to note that State Police will not be releasing the specific convictions. Rather, just as in prior years, State Police will simply report whether there are any convictions, however, now that will include misdemeanor convictions as well as felonies.

<sup>1</sup> Districts are strongly encouraged to take this opportunity to create a policy which defines who is a "designated volunteer".

<sup>2</sup> A Technical Advisory on RSA 189:13-a and RSA 189:39-b, I was previously released by the Department of Education and the Department of Safety on September 18, 2010. This Technical Advisory should be seen as a supplement to that prior advisory as it only addresses the amendments that were made.

<sup>3</sup> RSA 189:13-a, VI; IX(a).

<sup>4</sup> RSA 189:13-a, IV.

<sup>5</sup> Examples of some misdemeanors would be simple assault (RSA 631:2-a), misrepresenting age to purchase alcohol (RSA 179:9), failure to pay child support (RSA 639:4), marijuana possession (RSA 318-B:2), driving while under the influence of drugs or alcohol (RSA 265-A:2), and stalking (RSA 633:3-a). This is a non-exhaustive list and depending upon the specific facts of each individual case, some of these offenses could be charged as a felony level offenses.

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Pursuant to the amendment, upon an applicant submitting to a criminal background check, potential employers can now expect to receive a letter from State Police containing one of three responses:

- The applicant has a felony and/or misdemeanor conviction;
- The applicant has a conviction or a pending charge of a crime under Section V of NH RSA 189:13-a and accordingly, shall not be hired by a school administration unit, school district, or charter school;<sup>6</sup>
- The applicant has no criminal history record information.<sup>7</sup>

As mentioned above, the law previously stated and continues to state that no selected applicant shall be extended a final offer of employment if such person has been charged pending disposition for or convicted of any violation or attempted violation of any of the following offenses:

- RSA 630:1—Capitol Murder
- RSA 630:1-a—First Degree Murder
- RSA 630:1-b—Second Degree Murder
- RSA 630:2—Manslaughter
- RSA 632-A:2—Aggravated Felonious Sexual Assault
- RSA 632-A:3—Felonious Sexual Assault
- RSA 632-A:4—Sexual Assault
- RSA 633:1—Kidnapping
- RSA 639:2—Incest
- RSA 639:3—Endangering the Welfare of Child or Incompetent
- RSA 645:1, II or III—Indecent Exposure and Lewdness
- RSA 645:2—Prostitution and Related Offenses
- RSA 649-A:3—Child Pornography
- RSA 649-A:3-a—Possession of Child Sexual Abuse Images
- RSA 649-A:3-b—Possession of Child Sexual Abuse Images
- RSA 649-B:3—Computer Pornography and Child Exploitation Prevention

<sup>6</sup> RSA 189:13-a, V.

<sup>7</sup> Samples of each letter are attached to this Technical Advisory.

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- RSA 649-B:4—Certain Uses of Computer Services Prohibited
- RSA 650:2—Obscene Matter Offenses<sup>8</sup>

The law also still contains a discretionary provision which allows for the governing body of a school district, chartered public school, or public academy to adopt a policy stating that any applicant who has been convicted of any felony, or any of a list of felonies, shall not be hired.<sup>9</sup>

Superintendents and chief executive officers of a chartered public school or public academy are encouraged to update appropriate policies and procedures to reflect the districts' hiring policy regarding misdemeanor convictions. This is also a good opportunity for superintendents and chief executive officers to modify the application process so that the inclusion of misdemeanor convictions in the criminal history record check is reflected in the hiring practice.<sup>10</sup>

The new amendment to the law regarding the release of misdemeanor convictions is equally applicable to student teachers and student interns. Student teachers and student interns shall submit to a criminal history records check upon enrollment in a teacher preparation program, but shall not be required to submit to additional criminal history records checks if the student teacher or student intern maintains continuous enrollment in the teacher preparation program.<sup>11</sup>

#### **Authority to Review the Criminal Record and Confidentiality:**

The other significant change to RSA 189:13-a, is who in the governing body of the school administrative unit, school district, chartered public school, or public academy can have access to the applicant's criminal history records results from State Police.

The prior version of the law stated that the results of the background check were to be released to "the school administrative unit, school district, chartered public school, or public academy."<sup>12</sup> Therefore, previously a designee such as a human resource manager could receive and review the results of the applicant's criminal background check. However, the law has been amended so that the law now reads that the results of the applicant's background check may only be released to the "superintendent of the school administrative unit or the chief executive officer of

<sup>8</sup> RSA 189:13-a, V.

<sup>9</sup> RSA 189:13-a, V.

<sup>10</sup> Superintendents and chief executive officers should seek guidance from legal counsel regarding changes to the policy and application process.

<sup>11</sup> RSA 189:13-a, IX(b).

<sup>12</sup> RSA 189:13-a, III.

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the chartered public school or public academy.”<sup>13</sup> Therefore, the review of the applicant’s criminal history information is now strictly limited to a ‘superintendent,’ or ‘chief executive officer’ and CANNOT be assigned to a designee.

State Police will add two additional steps to the process of releasing the results of the criminal background results to help ensure that there is not an inadvertent violation of the law. First, State Police will stamp the words “CONFIDENTIAL” to the outside of the envelope which contains the results of the background check. Second, the State Police will include a pink cover sheet which will be on top of the criminal history results. However, districts should take this opportunity to put processes in place which will help to ensure that the superintendents and chief executive officers are the only people who have access to the results of an applicants’ criminal background check.

The law still provides that if an applicant’s criminal history record information indicates no criminal record, that the notification be destroyed immediately following review.<sup>14</sup> For a notification that contains a criminal history record, the superintendent or the chief executive officer must destroy the notification within **30 days** of receiving such information.<sup>15</sup> ***Under no circumstances*** may the criminal history records notification be kept by the school administrative unit, chartered public school or public academy.<sup>16</sup>

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<sup>13</sup> RSA 189:13-a, III.

<sup>14</sup> RSA 189:13-a, III.

<sup>15</sup> RSA 189:13-a, III.

<sup>16</sup> It is suggested that superintendents and chief executive officers seek guidance from legal counsel regarding what, if any, notes they may make regarding an applicants’ criminal background history.

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